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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Human rights defenders

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani, in accordance with General Assembly resolution 60/161.

Summary

In this her sixth annual report to the General Assembly, the Special Representative of the Secretary-General on the situation of human rights defenders gives a brief analysis of the methodology of work used during the six years of the mandate, before focusing on the right to freedom of assembly in relation to the activities of human rights defenders.

In the first section of the report, the Special Representative looks at how the methodology of the mandate has contributed to fulfilling the aims of Commission on Human Rights resolution 2000/61 and subsequent resolutions, and the implementation of the Declaration.

The main part of the report looks at different types of violations of human rights defenders' right to freedom of assembly, before looking at the provisions of the Declaration and other international human rights instruments that protect this right, including sections on the powers and responsibilities of States and of the police, and on reasonable restrictions on the right to freedom of assembly.

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The report concludes with recommendations to States on how to further enhance and ensure full implementation of the right to freedom of assembly as provided for in the Declaration as well as in other international instruments.

The right to freedom of assembly is one of the principal rights that need to be guaranteed in order to enable human rights defenders to carry out their important work. Without a guarantee of this right and protection against its violation by State officials or non-State entities, human rights defenders will be restricted in their ability to fulfil their fundamental role of protecting and promoting human rights. With this perspective in mind, the Special Representative expresses serious concern at the findings presented in this report and hopes that States will take stronger action in implementing the Declaration.

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I. Introduction

1. The present report is the sixth annual report submitted to the General Assembly by the Special Representative of the Secretary-General on the situation of human rights defenders. It is submitted pursuant to Commission on Human Rights resolution 2005/67 and General Assembly resolution 60/161.

2. In his report "In larger freedom: towards development, security and human rights for all", the Secretary-General pointed out that "[t]he notion of larger freedoms also encapsulates the idea that development, security and human rights go hand in hand" (A/59/2005, para. 14). The work of human rights defenders makes critical contributions to achieving the core objectives of the United Nations and its Member States. Their efforts to promote and protect human rights are fundamental in establishing and sustaining democracy, maintaining international peace and security and advancing the agenda for development.

3. By resolution 53/144 of 9 December 1998, the General Assembly adopted the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, known as the Declaration on Human Rights Defenders ("the Declaration"). The provisions of the Declaration provide a firm basis in international human rights law for the support and protection of human rights defenders and their activities to promote and protect human rights. Subsequent resolutions (see in particular resolution 58/178 of 22 December 2003) call for action by States and United Nations bodies to support the implementation of the Declaration.

4. The first part of this report gives an overview and a brief analysis of the methodology of work used during the six years of the mandate of the Special Representative of the Secretary-General on the situation for human rights defenders. The main part of the report focuses on the right to freedom of assembly in relation to the activities of human rights defenders. The report concludes with recommendations on how to further enhance and ensure full implementation of the right to freedom of assembly as provided for in the Declaration as well as in other international instruments.

II. Methodology of work used on the mandate

5. Commission on Human Rights resolution 2000/61 stipulates in paragraph 3 that the Special Representative on Human Rights Defenders "shall report on the situation of human rights defenders in all parts of the world and on possible means to enhance their protection in full compliance with the Declaration". "Protection" in this context should be understood to include both the protection of defenders themselves and the protection of their right to defend human rights.

6. The main activities of the Special Representative shall be "to seek, receive, examine and respond to information on the situation and the rights of anyone, acting individually or in association with others, to promote and protect human rights and fundamental freedoms"; "to establish cooperation and conduct dialogue with Governments and other interested actors on the promotion and effective implementation of the Declaration"; and "to recommend effective strategies better to protect human rights defenders and follow up on these recommendations".

7. The first section of this report will give an overview of how the methodology of the mandate has contributed to fulfilling the above-mentioned aims of the resolution and the implementation of the Declaration. The Special Representative will look at the complaints procedure, at official country visits, and at participation in international and regional events.

8. The Special Representative would like to point out that this is only meant to be a preparatory overview of this very important topic, which that can be the basis for a more thorough study aimed at improving working methods and methodology in the future.

A. The complaints procedure

9. Through the complaints procedure, the Special Representative addresses individual cases of human rights violations committed against human rights defenders with the State(s) concerned. Information on such cases is received from a variety of sources, and after thorough research in order to make sure to the extent possible that the information is accurate, the Special Representative identifies concerns to be raised with States and recommends to States how to ensure compliance with the Declaration.

10. Contact with States is usually conducted through either an urgent appeal or a letter of allegation addressed, respectively, to the State's Minister for Foreign Affairs (with a copy to its permanent mission to the United Nations Office at Geneva), or its Permanent Representative.

11. The communications provide details of the victim, a description of the alleged events and the human rights concerns raised by the information received; the primary objective is to ensure that State authorities are informed of the allegation as soon as possible and that they have an opportunity to investigate the case and to end or prevent any human rights violation. The communications remain confidential until the end of the reporting year when, in accordance with resolution 2000/61, an annual report is submitted to the Commission on Human Rights (now the Human Rights Council) containing a summary of the communications sent and the replies received, together with recommendations. Often, communications are sent jointly with other mandate holders. The Special Representative's recommendations concern how to implement the Declaration and ensure the protection of defenders, and always indicate her willingness and availability to provide further advice on effective strategies for protection.

12. From the beginning of the mandate until 1 December 2005, the Special Representative sent 1,194 communications to Governments and received responses to 720 of them. Taking into account that some of these communications were sent in the last four months of 2005 and that States might have replied after the reporting deadline of 1 December 2005, this means that more than 400 communications have gone unanswered (i.e. less than two thirds of the cases).

13. States have made efforts to provide the Special Representative with responses, some of them elaborate and detailed, and in some cases the Government recognizes the wrongdoing of officials, or promises to investigate an alleged violation or ensure the protection of defenders. The Special Representative nevertheless regrets that Governments have often failed to respond in a manner that is conducive to

cooperation and dialogue. Among the responses received, the Special Representative has found the following trends: denial of the human rights defender status of the victim or of his/her link to human rights work; the invocation of national law to justify acts; denial of facts presented; contending that national remedies had not been sought; alleging that the victims' acts constituted a disturbance of public order; and questioning the legitimacy of the mandate.

14. The number of communications transmitted by the Special Representative to the Government of a particular country cannot necessarily be taken as a comprehensive reflection of the situation of defenders in that country. The fact that no communications have been sent to a Government might indicate that there are few gaps in the implementation of the Declaration in that country, but it could also be indicative of factors such as lack of awareness about the mandate, difficulties for or a deficiency in the capacity of civil society, or strong State repression of civil society preventing information about violations from reaching the Special Representative.

15. Despite these constraints on her ability to make an accurate assessment of the severity or frequency of violations against defenders in a country or region based on communications received by her, the Special Representative through this procedure can often detect trends in both the kinds of violations committed and whether there has been an increase. While the Special Representative can use the information she gathers through the complaints procedure to alert the Human Rights Council or other United Nations bodies to a pattern of increased violations, the absence of complaints does not allow her to state, with any degree of accuracy, that the environment in a country or region is conducive to the work of defenders.

16. The most prevalent challenge in relation to the complaints procedure is the limited possibility for follow-up on the developments in each case where defenders' rights have been or are in danger of being violated. The efficacy of the complaints procedure very much relies on the willingness of States to cooperate. At present, the Special Representative does not have the capacity, i.e. the human resources, that would be needed to ensure proper follow-up in each case.

17. The Special Representative also issues press releases in relation to allegations of violations of the rights of human rights defenders. Since the beginning of the mandate, the Special Representative has issued 21 press releases. Nine of them were in connection with official visits to countries, or activities carried out by the Special Representative. The remaining 12 were issued in relation to immediate and grave concerns about the situation of a group or groups of defenders in a particular country. Of these 12 press releases, 9 were sent jointly with other mandate holders.

B. Official country visits

18. The Special Representative is mandated to conduct official visits to States. In those cases where the Special Representative would like to make an official visit to a country that has not extended a standing invitation to the special procedures mandate holders, she writes to the Government asking for an invitation. As of July 2006, 55 countries had issued a standing invitation to the special procedures. As of August 2006, 20 countries had not responded to repeated requests for an invitation from the Special Representative.

19. Prior to and during her official missions, the Special Representative relies on the assistance of the authorities, United Nations offices/country teams, national human rights institutions and defenders' organizations in the planning and coordination of the visit. In accordance with the activities prescribed in resolution 2000/61, following each visit, the Special Representative submits a report on the mission indicating her main concerns and recommendations for action. These mission reports have presented a comprehensive overview of the situation of human rights defenders in the countries concerned. As is the case with the complaints procedure, the effectiveness of the recommendations presented is dependent on the willingness of the Government to comply with them.

20. These visits provide an opportunity to seek, receive and examine in detail the role and situation of human rights defenders in the country, through meeting with defenders and their organizations and receiving information from them; they also provide a unique opportunity to gather first-hand information about the situation of defenders by observing demonstrations, trials, and the work of defenders' organizations.

21. In most cases, the Special Representative has had the full cooperation of the Government in the planning of her visit and has been able to meet extensively both with representatives of the authorities and defenders themselves. There have, however, been instances where restrictions on their freedom of movement have prevented defenders from meeting the Special Representative, and instances where Governments have not cooperated sufficiently to make timely arrangements or allow meetings at the appropriate level, with the authorities competent to make or influence State policy. The Special Representative regrets that in such situations her dialogue with authorities has been of much less benefit than in countries where she was able to address her concerns and recommendations at the highest level.

22. As regards establishing cooperation and conducting dialogue with defenders and the authorities, the increased information received from defenders in the country after an official mission testifies to the significance of these visits in establishing contact with the defenders themselves.

23. The Special Representative has some concerns regarding her ability to prepare mission reports within the shortest possible time and acknowledges that, at least in the case of the more recent visits, there has been a delay in the compilation of the report that could have affected the effectiveness of her recommendations. The interest of a Government in issues relevant to her mandate is keenest during and immediately following the mission. Delay in communicating the substance and details of the issues can result in losing valuable opportunities for immediate and effective implementation of her recommendations. This is a shortcoming that she is committed to rectifying for any future missions, in consultation with the Special Procedures Branch of the Office of the High Commissioner for Human Rights.

C. Participation in international and regional conferences and events

24. The Special Representative regularly attends regional and international human rights events. The Special Representative would like to reiterate that non-governmental organizations (NGOs) and the defenders working with them in her view constitute the raison d'être of the mandate. Consequently, she has made every effort to be accessible to them.

25. Among the events organized by civil society or regional or intergovernmental organizations in which the Special Representative has participated recently were the Dublin Platform for Human Rights Defenders in Ireland, the International Consultation on Women Human Rights Defenders in Sri Lanka, the World Social Forum in Pakistan, the Carter Conference in the United States of America, the International Conference on Lesbian, Gay, Bisexual and Transgender (LGBT) Human Rights in Canada, and conferences and round tables hosted by the Organization for Security and Cooperation in Europe, the European Union (EU), the African Union and the Inter-American Commission on Human Rights.

26. Through participating in international and regional human rights events, the Special Representative is able to learn about and report on global and regional initiatives aiming to promote the implementation of the Declaration, such as the adoption of the EU Guidelines on Human Rights Defenders and the creation of the mandate for a Special Rapporteur on human rights defenders in Africa of the African Commission on Human and Peoples' Rights.

27. Through participation in these events, the Special Representative is able to meet directly with defenders in order to receive information and hear personal testimonies of violations of their rights and fulfil her mandate.

28. Through her participation in these events the Special Representative is also able to encourage and help build networks and alliances between human rights defenders across national borders and regional boundaries and to observe and report on initiatives that have strengthened cooperation, coordination and solidarity among defenders at national, regional and international levels.

III. Meeting the standards of the right to freedom of assembly as contained in the Declaration on Human Rights Defenders and other international and regional instruments

A. Violations of the right to freedom of assembly of defenders

29. In her initial report to the Commission on Human Rights (E/CN.4/2001/94), the Special Representative identified a series of issues requiring her special consideration, including the right to freedom of assembly, and in all her successive reports to the Commission she has reported on cases of violations of the right to peaceful assembly. The following is a summary and an analysis of the trends in relation to violations of this right, and it concludes with recommendations addressed to States, individually and as Members of the United Nations, on conformity with international standards in this field.

30. At least 253 of the 1,194 communications to Governments concerning alleged violations of the Declaration dealt directly with violations of the right to freedom of assembly. The Special Representative has received responses to less than half of these communications from the Governments concerned. Although some Governments have replied to all her communications in detail, the lack of responses or non-substantive responses from many Governments is a concern for the Special Representative.

31. In terms of defenders' activities, the right to freedom of assembly relates to numerous forms of assembly ranging from a meeting inside a private residence to meetings and conferences in public places, demonstrations, vigils, marches, picket lines and other kinds of assemblies, indoors or outdoors, with the aim of promoting and protecting human rights. The assemblies can be organized by an NGO, a trade union, an ad hoc group, a social movement, or by individual defenders seeking to raise an issue for debate or protesting against human rights violations of different kinds.

32. Restrictions imposed on freedom of assembly have been broadly applied to prohibit or disrupt peaceful human rights assemblies, frequently on the pretext of the need to maintain public order, and increasingly relying on counter-terrorism legislation, arguments and mechanisms. The Special Representative has no reason to believe that the restrictions on, or violations of, the right to freedom of assembly have decreased. Rather, there has been a continuous increase, apart from a minor decrease in 2004, in the number of cases raised with Governments concerning freedom of assembly.

33. In addition to the communications sent directly to Governments, the Special Representative has issued six press releases where violations of the right to freedom of assembly have been among the issues raised. Three of them were issued in connection with official country missions undertaken by the Special Representative during which she witnessed violations of the right to freedom of assembly or heard reports from defenders or NGOs of such violations. These were her missions to Nigeria (May 2005), Israel and the Occupied Palestinian Territory (11 October 2005) and Brazil (20 December 2005). The three other press releases were issued to express serious concern over situations of violations of the right to freedom of assembly in Bolivia (16 October 2003), India (13 April 2006) and Nepal (20 April 2006). These three press releases were issued jointly with other mandate holders.

34. Communications concerning alleged violations of the right to freedom of assembly of defenders have been sent to 62 countries. The Special Representative has sent more than 10 communications to the following countries: Israel (11), Nepal (11), Tunisia (22), Uzbekistan (11) and Zimbabwe (14).

35. From an analysis of the communications that the Special Representative has sent to Governments on this issue as of the end of 2005, she is able to detect certain trends regarding both the types of violations and the identity of the alleged perpetrators. Broadly, the violations can be divided into six groups: arrests, violence against defenders during assemblies including defenders who have been killed, threats against defenders, travel restrictions for defenders wishing to participate in assemblies to promote and protect human rights, assemblies that are interrupted or that are not allowed to be held, and restrictions imposed on this right through legislation.

36. The Special Representative is aware that there are several factors that determine the flow of information leading to the communication of concern by her to any country regarding a situation. The number of cases brought to her attention from a country may not always mirror the frequency of violations and the comparative degree to which the freedom of assembly is violated. While a small number of cases may suggest that the situation is satisfactory in terms of the right to freedom of assembly, it can also be a sign that repression of human rights activities is so prevalent that defenders do not take the risk of assembling. Nevertheless, from

material gathered through official missions, participation in conferences, meetings and consultations with defenders, and information relayed to her by Governments and civil society, the Special Representative is able to deduce some main areas of concern.

37. A reading of the cases where communications have been sent suggests that violations take place before, during and after assemblies. The numbers presented in the present report are based on those cases where it is clear to the Special Representative and the defenders in question that the violation is related to the defenders' participation in, or planned participation in, an assembly with the purpose of promoting and protecting human rights. Additionally, there are numerous cases where the defenders in question and the Special Representative have good reason to believe that the violations are linked partly to the defenders exercising their right to freedom of assembly, but where the violations are more directly linked to violations of other articles of the Declaration and where the violations have not taken place during an assembly, or directly before or after.

1. Arrests

38. The Special Representative has sent 139 communications to Governments dealing with defenders who have allegedly been detained or arrested while exercising their right to freedom of assembly. Arrests and detentions are often arbitrary. In most of the cases, the defenders have been arrested during demonstrations that have been broken up by the police, or during meetings or conferences. The majority of cases concerning arrests of defenders have been sent to Governments in Africa, the Middle East and North Africa, and Asia.

39. Arrests of defenders are in most cases accompanied by violence against defenders, and a large number of those arrested report having been ill-treated and even tortured or raped in connection with their arrest and detention. In many of the cases, defenders are never brought to trial, but merely released on bail after a certain amount of time, or detained without having their case brought before a judge. In some countries the Special Representative has received reports of arrested defenders being released on the condition that they do not return to the area where they were participating in peaceful assembly.

40. Several cases have been reported to the Special Representative where defenders allegedly have been arrested "preventively", i.e. to hinder them from participating in planned demonstrations, meetings or conferences, both in the country and abroad. In September 2001, the Special Representative sent a communication to Cuba regarding a defender who was reportedly detained to prevent him from taking part in a demonstration to celebrate Human Rights Day. Communications have also been sent regarding defenders who have been arrested on their way to assemblies, in particular international conferences, seemingly in order to prevent them from participating in the event.

2. Violence against defenders and defenders killed during assemblies

41. The Special Representative has sent 74 communications to Governments concerning violence against defenders exercising their right to peaceful assembly. The Special Representative is gravely concerned about the rising number of incidents reported to her concerning an excessive and often indiscriminate use of force against those exercising their right to peaceful assembly. Reports have been

received of tear gas, rubber-coated metal bullets, rubber bullets, stun grenades and other violent means being used in order to disperse peaceful gatherings.

42. In eight of these cases, from Argentina, Bolivia, the Dominican Republic, India, Israel, the Gambia and Turkey, defenders were killed. Altogether, the Special Representative has had reports of more than 85 defenders having been killed during demonstrations, picketing, meetings or conferences. In one case in Bolivia in 2003, when demonstrators urged the Government to abandon a project to sell gas and to approve a programme that would benefit the local inhabitants, the Special Representative and other United Nations experts issued a press release citing allegations of excessive use of force by the army and the police in the course of their ongoing law enforcement operations, as a result of which at least 50 persons, many of them belonging to indigenous communities, had died and more than 100 had been injured.

43. In a majority of cases, the alleged perpetrators of violence against defenders are State officials, mainly the police or military personnel. Nevertheless, non-State actors are also, on occasion, reported to be the perpetrators of violence against defenders. Violations of the rights of human rights defenders by non-State actors are seldom adequately or effectively addressed by the authorities.

44. It is true that at times peaceful assemblies have turned violent and that on some occasions there are elements within these assemblies who resort to unprovoked violence. The Special Representative has, nevertheless, observed that it is frequently the excessive and disproportionate use of force by the police or army during peaceful demonstrations that has provoked violent reactions from an otherwise peaceful assembly, in turn answered by more violence from the police or army and again leading to deaths and severe injuries. The Special Representative is also gravely concerned at allegations that the authorities in some countries and settings have used undercover personnel to instigate violence in peaceful assemblies in order to justify using violent means to disperse the assembly or arrest people. Such conduct by State authorities clearly contradicts the principle of State responsibility enshrined in articles 2 and 12 of the Declaration and renders the State accountable for provocations that result in violence.

45. In a press release issued after her visit to Nigeria, the Special Representative raised serious concerns regarding the practices of the police, as she had heard accounts while in Nigeria of excesses committed during demonstrations and law enforcement operations, torture and unlawful confinement. The Special Representative noted that while the Government had informed her of various initiatives to train the police, she nevertheless had grave reservations regarding the seriousness of the commitment to reorient the police, and that so far such training appeared to have had only a marginal impact, in particular at the local level (see E/CN.4/2006/95/Add.2).

46. The press release issued at the end of the mission to Israel and the Occupied Palestinian Territory noted the total lack of respect for the freedom of assembly apparent in repressions of the right to peaceful protest in the Occupied Palestinian Territories (see E/CN.4/2006/95/Add.3). In a press release issued following the official mission to Brazil in December 2005, the Special Representative stated that she was greatly disturbed by reports indicating that when human rights activists organize they are accused of forming criminal gangs and when they mobilize for

collective action to protest violation of rights they are accused of creating public disorder (see E/CN.4/2006/95/Add.4).

47. In a press release issued on 13 April 2006, the Special Representative expressed concern about the impact of the raising of the height of a dam on the Narmada River in India, and expressed serious concern about information that the police had used indiscriminate, excessive and disproportionate force against protestors.

48. The Special Representative is particularly concerned at reports she has frequently received from several countries about the use of so-called non-lethal weapons like rubber bullets by security forces in their operations during public gatherings. In response to her questions, authorities in certain States could not satisfy her about the procedures that allegedly streamline procedures for the authorization and monitoring of such use.

3. Threats and accusations against defenders

49. The Special Representative has transmitted 32 communications to Governments concerning threats against defenders or members of their families either prior to, during or after their participation in a peaceful assembly. More than half of the communications sent concerning such threats have been sent to States in Central and South America.

50. Defenders are targeted for participating or organizing public gatherings. Information received by the Special Representative indicates that defenders in some cases have lost their jobs or have been suspended from university, allegedly for having participated in a demonstration or meeting.

51. Defenders and their families have received telephone calls threatening death or injury. In addition to verbal threats, there have been cases where defenders and their families and/or colleagues have received funeral wreaths or condolence cards, clearly indicating that the defender in question could be killed if he or she continues his or her human rights work. Defenders have also been accused of "inciting violence", "forming criminal gangs", "creating public disorder", or "conducting anti-State activities".

52. In most cases it is difficult to pinpoint the source of such threats. Often the threats are transmitted to defenders on the telephone, or in the form of anonymous letters and cards, and sometimes the threats are even given via family members, friends or colleagues. In some cases the defenders themselves have indicated that they have reason to believe that the authorities are behind the threats, whereas in other cases they have reason to believe that the persons threatening them are non-State actors. In some instances it has also been alleged that the authorities and non-State actors have colluded in issuing these threats.

4. Demonstrations and meetings interrupted/prohibited

53. The Special Representative has transmitted 16 communications concerning demonstrations, meetings, conferences and other assemblies that have not received authorization from the authorities, or that have otherwise been prevented from being held. These cases do not include those where a demonstration was violently dispersed or where travel restrictions were imposed on defenders. Communications dealing with assemblies that have been interrupted or otherwise prevented from

being held have been sent to all regions apart from Central and South America. The majority of the cases have been reported from the Middle East and North Africa and from Asia.

54. Where authorization was withheld, some of the reasons given were that the events or their organizers would "agitate the population", that the organization responsible for the event was not registered, that the organizers had not sought permission for the event to be held, that there was a danger of violent counter-demonstrations, and that the demonstration would interrupt traffic. In some cases, the authorities closed certain areas to demonstrations by defenders on the ground that they were "closed military areas", although there were allegedly no military installations situated in the areas concerned. In most of the cases, however, no reason was given at the time and the Special Representative has not received a response from the Government indicating the reason for not allowing the assemblies to be held.

55. In the remaining cases, authorization was initially given, or no authorization was needed according to the law, but participants were prevented from entering the conference, the meeting or the place of the demonstration, often without explanation. Defenders have reported to the Special Representative that the granting of authorization often seems to be arbitrary rather than based on laws and regulations. Reports also indicate that decisions are often politically motivated, depending on a Government's views on the issue and its relationship with the organization that has led the initiative.

56. With respect to the reasons for restricting or denying the freedom of assembly, the Special Representative draws attention to article 2 of the Declaration, which places the responsibility on the State to adopt such steps as may be necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that persons are able to enjoy human rights and fundamental freedoms. The right to protest is an essential element of the right to participation in any democratic dispensation and restrictions imposed on this right must be closely scrutinized with respect to their necessity and reasonableness. The Special Representative has noticed that administrative measures to restrict or prohibit the freedom of assembly are in many instances imposed without serious consideration or relevance to genuine concerns relating to security, public safety or order, etc. She is also unable to accept that a peaceful assembly that is threatened with violence should itself be prohibited rather than be assured of protection in accordance with State responsibility.

5. Travel restrictions for defenders

57. Twenty-eight communications have been sent by the Special Representative regarding cases where the Authorities have imposed travel restrictions on defenders who were travelling to international events. In most of these cases, defenders have been prevented from leaving the country by representatives of the authorities at airports or border-crossings. In some of the cases, defenders have not been issued with the documents needed in order to travel. Communications relating to travel restrictions for defenders have been sent to countries in all regions, but nearly half of the communications have been sent to States in the Middle East and North Africa. A large number of communications on this question have also been sent to Eastern European and Central Asian States.

58. In those cases where the authorities have given a reason for the restrictions on travel, defenders have been deemed "security threats" or "spies" and have been accused of being involved in "terrorist activities" or of trying to "tarnish the image of the country abroad". In June 2005, a communication was sent to Pakistan concerning a woman defender who was supposed to travel to the United States where she was due to participate in a conference organized by a human rights group. The defender had allegedly been placed on the so-called exit-control list, and had had her passport taken away, and it was reported that the President of Pakistan had stated that he imposed a travel ban on the defender in order to protect the image of Pakistan abroad.

59. The Special Representative is particularly concerned at reports of defenders who have been prevented from attending United Nations conferences, events at the European Parliament, conferences organized by OSCE and large regional and international conferences such as the African Peace Forum and the World Social Forum. In November 2005, the Special Representative sent a communication to Belarus concerning a lawyer and human rights defender who had had her application to leave the country to participate in a conference organized by OSCE, rejected.

60. The Special Representative notes that travel restrictions imposed on defenders in order to prevent them from participating in assemblies of different kinds outside their country of residence is contrary to the spirit of the Declaration and the recognition in its preamble that individuals, groups and associations have the right to "promote respect for and foster knowledge of human rights and fundamental freedoms at the national and international levels".

6. Legislation restricting the right to freedom of assembly

61. The Special Representative has sent five communications concerning legislation restricting the right to freedom of assembly, to Belarus (3), Egypt and Zimbabwe. These communications concern the amendment of national laws or the introduction of new laws, regulations or decrees that limit the right to freedom of assembly.

62. While most national constitutions formally guarantee the right to freedom of assembly, in many cases this right has subsequently been restricted through secondary legislation. The Special Representative is encouraged by information that some States have amended national laws to remove or reduce limitations on the freedom of assembly, as well as on the freedom of expression and association. Regrettably, however, there have been more cases reported of restrictive laws being introduced or reintroduced in this field than there have been reports of legislation being changed in order to conform to international standards. Most national laws require official written permission for holding assemblies, rallies and demonstrations. National laws in some States, such as Bahrain and Myanmar, can be invoked to prohibit any gathering of five or more persons without official authorization.

63. In certain States the law requires notification of the intent to hold public gatherings, and there are satisfactory appeal procedures should authorization be denied. On the other hand, in numerous States permission often is not given, and administrative resolutions and decrees have allegedly been used to declare even peaceful assemblies unlawful and thereby punishable under the Criminal Code. In

several cases it has also been reported to the Special Representative that no appeal procedures exist when permission to hold peaceful assemblies has been denied.

64. The Special Representative has received information from defenders indicating that the authorities often prevent them from holding rallies, demonstrations or other assemblies in central areas of cities and towns, but that the assembly has been given permission to convene in "pre-authorized" locations, or in locations on the outskirts of the city. Some States also have regulations stating that assemblies cannot be held within a certain radius of buildings of the legislative, executive or judicial authorities. Such measures would also be contrary to the spirit of the Declaration (art. 6 (c)) if measures limiting the freedom of assembly are motivated by the desire to isolate human rights gatherings in order to prevent defenders from drawing public attention to the issues they are raising.

65. Defenders have reportedly been prosecuted under laws that allow the executive to arbitrarily ban public gatherings generally, or at specified locations. Farmers have been prosecuted in anti-terrorist courts for protesting attempts by State security forces to evict them from land; peace activists and anti-war protesters have been maligned and threatened with prosecution for defying travel restrictions; defenders have been charged with unlawful presence in a closed military zone when the area was in fact a civilian area with no military installations; and defenders participating in peaceful demonstrations have been charged with disrupting traffic and disturbing public order.

66. After regional consultations with defenders in the Middle East (see A/57/182), concern was expressed that the precedence often given to security considerations over human rights since 11 September 2001 has eroded the international system of human rights. The Special Representative is concerned at the apparent trend that legislation has become more restrictive and the policing of demonstrations become more violent, and that security considerations are used as the explicit pretext for adopting new legislation or harsher measures against defenders in many countries around the world. The worst affected by these new laws or regulations seem to be pro-democracy activists and those organizing or taking part in peaceful public action asserting their right to independence or self-determination.

67. In May 2001, a presidential decree was issued in Belarus, entitled "On certain measures to improve procedures for holding meetings, rallies, street processions, demonstrations and other mass actions and pickets". This decree imposed restrictions on the right to freedom of assembly, and it was reported at the time that under the decree, the body organizing an event could be held entirely responsible should public order be deemed to have been violated and could be fined or deregistered as a result.

68. During her official mission to Nigeria in 2005, defenders reported to the Special Representative that they were frequently prevented from holding rallies. The Public Order Act in Nigeria has been repeatedly used to deny permission for public gatherings. While the Special Representative recognizes the responsibility of a Government to preserve public order and peace, examples cited to her in this case and in cases from other countries indicate that refusal to grant permission is often arbitrary and not based on any reasonable apprehensions or justified by the facts and circumstances of the particular event.

69. After regional consultations with defenders' organizations, the Special Representative reported to the General Assembly in 2002 (ibid.) that the situation in several African countries was such that laws restricting freedom of assembly allowed Governments to treat peaceful assemblies as illegal and to use violence against human rights defenders exercising their right to protest against human rights violations. Although the material available to the Special Representative does not allow for an analysis of whether this situation has improved or worsened in different African countries, the Special Representative has seen an increase in administrative and legal restrictions on the right to freedom of assembly, in particular in Zimbabwe, during the past few years.

7. Particular challenges for vulnerable groups

70. Although all defenders are potentially vulnerable in situations where they are exercising their right to freedom of assembly, certain groups of defenders should be given particular attention and more effort should be focused on strengthening the protection of these groups.

71. The Special Representative has sent communications concerning defenders working specifically on the rights of lesbian, gay, bisexual and transgender (LGBT) persons who have had their right to peaceful assembly violated. In one case from India, the police, allegedly several times, barred defenders and LGBT persons from entering the office of an organization working on LGBT rights. In a case from Poland, an "Equality March" organized by LGBT defenders was banned by the authorities; however, the Special Representative was pleased to note that it was allowed the following year.

72. Women defenders often face more risks when participating in collective public action because of perceptions of the traditional role of women in some societies, and they become targets of non-State actors. Retaliation against them takes such forms as rape and sexual assault which can have adverse social consequences in addition to causing physical harm.

73. Women have been attacked and arrested for organizing a marathon for women in support of women's rights in Pakistan; they have been attacked, arrested and raped after organizing peaceful demonstrations and vigils in Zimbabwe; and women in Uzbekistan have been threatened by conservative religious groups and persons. In some of the cases, the alleged perpetrators were the authorities in the form of the police and/or the army. In several of the cases, the alleged perpetrators were non-State entities and even members of the women defenders' local community. In these cases the women defenders did not receive adequate protection from the State as guaranteed by article 12 of the Declaration.

8. The activities of defenders in conflict situations

74. As the Special Representative pointed out in her 2005 report to the General Assembly (A/60/339 and Corr.1), defenders fulfil a fundamental role in the preservation and restoration of peace and security. Defenders contribute to ending ongoing conflict, to preventing conflict from breaking out, and to peacebuilding in post-conflict situations. Defenders do this through several means, including demonstrations and vigils, meetings and conferences, dialogues and other forms of assemblies addressing human rights issues.

75. Human rights violations become more severe in situations of military governance or a resort to military means by the authorities as a response to security concerns. Freedom of assembly is one of the basic rights that will be particularly affected in such situations, as defenders who seek to assert the legitimacy of peaceful protest and the lawful exercise of the right to freedom of assembly are branded as subversive, threats to national security, or propagators of public disorder.

B. The right to freedom of assembly in international and regional treaties and declarations

76. The Declaration on Human Rights Defenders acknowledges the legitimacy of participation in peaceful activities to protest against violations of human rights, and recognizes freedom of assembly as a very important element of this right. Those engaged in such activities are entitled to effective protection under national law against any adverse action by the State. The right to freedom of assembly is vital for human rights defenders working locally, nationally and globally to promote and protect human rights. Article 5 of the Declaration states that "[f]or the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels: (a) to meet or assemble peacefully ...." Exercising this right to assemble in order to promote and protect human rights, by protesting against public policy or State action, or by protesting actions by non-State groups and demanding protection by the State, is an effective mode of participation in a democracy.

77. At present, the right to freedom of assembly is not specifically covered by any particular thematic mandate under the Human Rights Council as is, for example, the right to freedom of expression. This is one of the reasons why the Special Representative has found it important to devote this report to the implementation of the Declaration in this area as this right is critical to the work and activities of defenders.

78. The right to freedom of assembly is protected by several international and regional treaties and conventions. Article 21 of the International Covenant on Civil and Political Rights (ICCPR) states: "The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others." In addition, article 5 (d) (ix) of the International Convention on the Elimination of All Forms of Racial Discrimination, article 15 of the Convention on the Rights of the Child, article 8 of the African Charter on the Rights and Welfare of the Child, article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms, article 11 of the African Charter on Human and Peoples' Rights and article 15 of the American Convention on Human Rights all protect the right to freedom of assembly.

79. The right to freedom of assembly is also guaranteed by several declarations. Article 20 (1) of the Universal Declaration of Human Rights states: "Everyone has the right to freedom of peaceful assembly and association." This right is also protected by article 2 (5) of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities, article XXI of the American

Declaration of the Rights and Duties of Man, and the Charter of Paris for a New Europe, which affirms that, "without discrimination, every individual has the right to ... freedom of association and peaceful assembly...."

80. According to general comment No. 15 (1986) of the Human Rights Committee on the position of aliens under the Covenant, aliens do "receive the benefit of the right of peaceful assembly", indicating that not only citizens of the State have the right to freedom of assembly, but also foreign nationals and stateless persons.

1. Powers and responsibilities of States

81. In the preamble to the Declaration it is stressed that "the prime responsibility and duty to promote and protect human rights and fundamental freedoms lie with the State". States have a positive duty to actively protect assemblies that are lawful and peaceful, including protecting the participants against persons or groups that attempt to disrupt an assembly or carry out violent acts against the participants. This does not mean that, for instance, counter-demonstrations should not be allowed, but rather that it is the responsibility of the State to ensure that public order is maintained, and that participants are protected from violent attacks.

82. Article 12 (3) of the Declaration states that "everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms".

83. National law in several countries that restrict the right to freedom of assembly allows for action against defenders for activities that are protected by the Declaration, thus rendering interventions for the protection of defenders ineffective. Governments' reliance on national security laws when reacting to exposure or criticism of their human rights practices is one of the major factors threatening the safety of defenders and hampering their contribution to the promotion and protection of human rights nationally and internationally.

2. Powers and responsibilities of the police

84. Article 3 of the Code of Conduct for Law Enforcement Officials states: "Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty". In the commentary to this article it is pointed out that "[n]ational law ordinarily restricts the use of force by law enforcement officials in accordance with a principle of proportionality. It is to be understood that such national principles of proportionality are to be respected in the interpretation of this provision. In no case should this provision be interpreted to authorize the use of force which is disproportionate to the legitimate objective to be achieved".

85. The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials deal with the policing of unlawful assemblies. Principle 12 states: "As everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, Governments and law enforcement agencies and officials shall recognize that force and firearms may be

used only in accordance with principles 13 and 14." Principle 13 reads: "In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary." Principle 14 reads: "In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in principle 9." Principle 9 states: "Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life."

86. In a press release issued in 2003, the Special Representative urged the Bolivian authorities to ensure that law enforcement officials engaged in those operations carry out their duties in strict compliance with human rights standards, and in particular that, the strict limits on the use of lethal force, as stipulated under the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, are followed rigorously and without exception. In a press release concerning peaceful protests in India where police allegedly used indiscriminate force against the protestors, the Special Representative recommended that the allegations of indiscriminate and excessive use of force by the police against activists engaged in the protest should be properly investigated and action taken against the responsible officers, as appropriate.

87. In their responses to the communications from the Special Representative, Governments sometimes assure the Special Representative that investigations into violations of the right to freedom of assembly are being or will be investigated. In some cases the authorities have also informed the Special Representative that the perpetrators have been found guilty. In most of these cases, the perpetrators have been the police, and the outcome of the case has reportedly been either warnings, reprimands, or disciplinary penalties. Nevertheless, impunity for perpetrators of violence, attacks or threats to defenders in relation to violations of the freedom of peaceful assembly is widely practised

3. Reasonable restrictions

88. The preamble to the Declaration states that "the absence of international peace and security does not excuse non-compliance". Additionally, article 17 of the Declaration states: "In the exercise of the rights and freedoms referred to in the present Declaration, everyone, acting individually and in association with others, shall be subject only to such limitations as are in accordance with applicable international obligations and are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society."

89. Article 4 (1) of ICCPR states: "In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States

Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin."

90. In its general comment No. 29 (2001), the Human Rights Committee gives its general comments on article 4 of ICCPR on derogations during a state of emergency. Two fundamental conditions must be met before a State moves to invoke article 4: the situation must amount to a public emergency which threatens the life of the nation, and the State party must have officially proclaimed a state of emergency. A fundamental requirement for any measures derogating from ICCPR, as set forth in article 4, is that such measures must be limited to the extent strictly required by the exigencies of the situation. This requirement relates to the duration, geographical coverage and material scope of the state of emergency and any measures of derogation resorted to because of the emergency. Further, article 4 (1) requires that no measure derogating from the provisions of ICCPR can be inconsistent with the State party's other obligations under international l , particularly the rules of international humanitarian law, and that States parties may in no circumstances invoke article 4 of ICCPR as justification for acting in violation of humanitarian law or peremptory norms of international law, for instance by taking hostages, by imposing collective punishments, through arbitrary deprivations of liberty or by deviating from fundamental principles of fair trial, including the presumption of innocence.

4. New regional initiatives

91. The Special Representative has previously welcomed the creation of the Unit on Freedom of Association within the Office for Democratic Institutions and Human Rights (ODIHR) of OSCE. In March 2005, the Special Representative was invited to participate in a conference convened by OSCE/ODIHR in Almaty which focused on developing an adequate legal framework for freedom of association and assembly in Central Asia. One of the Special Representative's staff attended the conference, and the Special Representative has been continuously kept informed of further steps in the process including round-table discussions held in the first half of 2006 and the OSCE/ODIHR Guidelines for Drafting Laws pertaining to the Freedom of Assembly.

IV. Recommendations in conformity with the Declaration

92. **It is recommended that States keep in mind the importance of ensuring and maintaining the "contextual space" for the activities of human rights defenders. This includes the right to peaceful assembly, in combination with the rights entailed in relation to freedom of expression and association, all protected by articles 5, 6 and 7 of the Declaration. If States can ensure that this contextual space is protected, human rights defenders will have a good basis for contributing to the promotion and protection of human rights in the best national and international interests.**

93. **The Special Representative urges all States to review their legal framework with the aim of making sure that national legislation is in**

conformity with the Declaration and other international commitments and international standards relating to the right to freedom of assembly. It is important in this regard that a holistic approach be adopted, looking not only at freedom of assembly but also in the context of other fundamental human rights guaranteed by the Declaration and other human rights instruments, such as the right to freedom of association and the right to freedom of expression. In this regard, the Special Representative reminds States that article 2 (2) of the Declaration states that "[e]ach State shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the present Declaration are effectively guaranteed".

94. **In particular, the Special Representative is concerned about the use of national security legislation against defenders' right to freedom of assembly, and urges States to review restrictions imposed by laws and regulations on the right to freedom of assembly to make sure that they are in conformity with the obligations of the State under international human rights law, are necessary, and are always strictly relevant to the obligation of the State to protect.**

95. **The Special Representative is gravely concerned about information that travel restrictions are imposed on defenders for being deemed "security threats", "spies", or for "tarnishing the image of the country abroad". The Special Representative reminds States of the preamble to the Declaration which acknowledges "the important role of international cooperation for, and the valuable work of individuals, groups and associations in contributing to the effective elimination of all human rights and fundamental freedoms ...."**

96. **While recognizing that States can place restrictions on the right to freedom of assembly in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others, the Special Representative urges States to favour regimes of notification rather than authorization when it comes to defenders exercising their right to freedom of assembly. In cases where authorization is required for the holding of an assembly, the Special Representative urges States to make sure that authorization is given on the basis of national legislation that is in accordance with the principle of non-discrimination enshrined in ICCPR.**

97. **While recognizing that in order to be able to fulfil their responsibility to protect defenders participating in an assembly, the authorities need to be notified in advance, the Special Representative encourages States to consider in exceptional circumstances that defenders, with the aim of protesting human rights violations, should have the possibility of responding immediately to an event by holding public, peaceful assemblies.**

98. **In conformity with article 15 of the Declaration, the Special Representative urges States to ensure that law enforcement agencies and their members are trained in and aware of international human rights standards and international standards for the policing of peaceful assemblies, including the Declaration on Human Rights Defenders, the Code of Conduct for Law Enforcement Officials and other relevant treaties, declarations and guidelines. The Special Representative also advises all States that all allegations of indiscriminate and/or excessive use of force by law enforcement officials should be properly investigated and appropriate action taken against the responsible officials.**

99. **The Special Representative reminds States that according to the Declaration and its article 9 (2), everyone whose rights or freedoms have allegedly been violated has the right, either in person or through legally authorized representation, to complain and to have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation due, where there has been a violation of that person's rights or freedoms, as well as enforcement of the eventual decision and award, all without undue delay.**

100. **The Special Representative urges States to ensure that there are satisfactory review procedures for complaints in the event of restrictions being imposed on assemblies. Additionally, States are urged to ensure access to courts to appeal against any decision to restrict an assembly, although this should not be a replacement for satisfactory administrative review procedures for addressing such complaints from defenders.**

101. **The Special Representative reminds States of their responsibilities, according to article 12 (2) of the Declaration, to "take all necessary measures to ensure the protection by the competent authorities of everyone ... against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration". She urges States to fulfil their obligation to protect defenders and to ensure there is no impunity for harm inflicted on defenders who are carrying out collective public action.**